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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,865	11/14/2003	Lauren Hoyez	HOY 302E	1860
23581	7590	04/01/2004	EXAMINER	
KOLISCH HARTWELL, P.C. 520 S.W. YAMHILL STREET SUITE 200 PORTLAND, OR 97204			MORAN, KATHERINE M	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 04/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/713,865	HOYEZ, LAUREN
	<b>Examiner</b>	<b>Art Unit</b>
	Katherine M Moran	3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 14 January 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-10 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 14 January 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

## DETAILED ACTION

### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1, 7, and 8 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 2 of U.S. Patent No. 6,647,553 in view of Fender (U.S. 4,550,445). '553 does not teach a reinforcement material for the border formed in the crown adjacent the aperture. Fender '445 teaches a reinforcement material in the form of a stitched hem (Figures 1 and 3). It would have been obvious to provide a reinforcement material as a support means for the aperture so that the aperture's shape can be maintained.

### ***Specification***

3. The disclosure is objected to because of the following informalities: pg.1, line 3: insert -- now U.S. Patent No. 6,647,553-- after "10/116,976".

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 7-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 7 recites the limitation "the front bottom edge" and "the edge of the brim". There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-4 and 6-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Fender (U.S. 4,550,445). Fender discloses the invention as claimed. Fender teaches headwear comprising a crown 4 defining an opening for receiving a wearer's head, the crown being constructed to cover the wearer's head by making contact with at least a substantial part of the wearer's head, a brim 3 extending outward of the crown and having an edge which is joined to the crown, the brim defining in part the front of the cap, an elongate aperture 7 extending along a substantial length of the brim, and formed in the crown near and inward of the edge of the brim, the aperture capable of allowing an accumulation of a wearer's hair to extend therethrough, and a

Art Unit: 3765

border formed in the crown adjacent the aperture, including a reinforcement material in the form of a stitched hem (Figures 1 and 3), wherein the brim is capable of providing shade for the wearer's face and deflecting hair extending through the aperture. Adjustable member 2 allow for varying the size of the crown opening and one of the aperture's 7 is positioned adjacent the brim.

8. Claims 1, 2, and 6-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Ezenekwe (U.S. 6,381,754). Ezenekwe discloses the invention as claimed. Ezenekwe teaches headwear comprising a crown defining an opening for receiving a wearer's head, the crown being constructed to cover the wearer's head by making contact with at least a substantial part of the wearer's head, a brim extending outward of the crown and having an edge which is joined to the crown, the brim defining in part the front of the cap, an elongate aperture extending along a substantial length of the brim, and formed in the crown near and inward of the edge of the brim, the aperture capable of allowing an accumulation of a wearer's hair to extend therethrough, and a border formed in the crown adjacent the aperture, including a reinforcement material effective to allow the crown to assume a desired shape while worn by a wearer, wherein the brim is capable of providing shade for the wearer's face and deflecting hair extending through the aperture. See Figures 1 and 2. An adjustable member in the form of a strap and buckle as shown in Figure 1, allows for varying the size of the opening. One of the aperture's long sides is positioned adjacent the brim.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3765

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fender '445 in view of Tapia (U.S. 5,070,545). Fender '445 discloses the invention substantially as claimed. Column 2, lines 10-15 recite that the crown 4 may be formed from a number of fabric elements connected together in a side-by-side fashion and converging at the top of the cap, with bottom edges which substantially define the opening for receiving a wearer's head. However, Fender does not teach that the panels are triangularly-shaped. Tapia '545 teaches a cap with triangular shaped panels forming a crown portion. This is a typical configuration for baseball-style caps. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to form Fender's panels in a triangular-shaped panels fashion, to increase the aesthetically pleasing qualities of the cap.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Austin (U.S. 5,907,871), Lema (U.S. 5,933,872), Keast (U.S. 6,367,084), and Ezenekwe (U.S. 6,381,754) teach relevant prior art.

Any inquiry concerning this communication or earlier communications should be directed to Primary Examiner Katherine Moran at (703) 305-0452. The examiner can be reached on Monday-Thursday from 8:30 am to 6:00 pm, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert, may be reached at (703) 305-1025. The official and after final fax number for the organization where this application is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Katherine Moran

Primary Examiner, AU 3765

Kmm

March 26, 2004